FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

DR, PEPI SCHAFLER

Petitioner

v

FAIRWAY PARK CONDOMINIUM ASSOCIATION
and each individual member of the board
INDIAN SPRINGS MAINTENANCE ASSOCIATION
and each individual member of the board,
NASON, YEAGER, GERSON, et al &GREGORY SCOTT

Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

AMENDED APPENDIX TO PETITION

FOR WRIT OF CERTIORARI

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ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

This cause comes before the court upon plaintiff Pepi Schafler 's motion for reconsideration of this court's dismissal order, entered April 25, 2002 . This court dismissed the plaintiff's complaint without prejudice because of plaintiff's failure to state a claim and for lack of subject matter jurisdiction. The court concluded that under the facts alleged , plaintiff's claim could never exceed this court's jurisdictional threshold of $75.000. If plaintiff believes she is entitled to relief based on the alleged actions of the defendants , she must sue in state court. Upon review of the motion for reconsideration, or alternatively motion to amend judgment pursuant to Fed R. Civ P. 59 and this court being fully advised in the premises, it is hereby Ordered and adjudged that plaintiff's motion for reconsideration is denied.

May 15, 2002

ss/Daniel T. K. Hurley
District Court Judge

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM , AND DISMISSING COMPLAINT

This cause comes before the court upon defendants motions dismiss plaintiff's complaint. Upon review of the complaint the motions and responses , and relevant case law, defendant's motions will be granted , and the plaintiff's complaint will be dismissed for failure to sufficiently allege diversity jurisdiction and failure to state a claim.

Background. On February 12, 2002 plaintiff Dr. Pepi Schafler , pro se filed a complaint in this court , styled a "claim for intentional and negligent interference with property rights , trespass to chattel, abuse of authority, failure to meet fiduciary obligation , discrimination , exploitation , attempted extortion , libel, slander, recklessness, misconduct and malpractice. " Defendants Fairway Park Condominium Association, Indian Springs Maintenance Association, and Gregory Scott and the law firm of Nason Yeager et al. were served with the summons and complaint. All three defendants have filed separate motions to dismiss. In her complaint Dr. Schafler alleges that she

owns a condominium : apartment 204, Building 23, located at 5780 Fairway Park Court, Boynton Beach , Florida 33437which is part of a larger development called Indian Springs . Plaintiff's apartment is located in the fairway Park complex. She states that she pays dues to and is a shareholder in the Fairway Park Condominium Association and the Indian Spring Maintenance Association . Nason, Yeager is the legal counsel to the two associations. As a basis for this court's jurisdiction , plaintiff invokes diversity jurisdiction 28 U.S.C #1332 alleging that she is a citizen of California , the defendants are all citizens of Florida and the amount in controversy exceeds $75.000. Plaintiff states that since she does not reside in Florida, she, like other condominium owners in the development, rents out the apartment during the winter months .She states that renting the property is generally permitted , provided the arrangements comply with certain restrictions- namely that the rental be for a minimum of three months, and only one rental per year is permitted . The renters must pay a 10% bed tax during their stay. Fairway Park charges a $50 fee when an apartment is rented. Dr. Schafler contends that last year, (2001) as in previous years she arranged for a realtor to locate a tenant for the apartment. She and the prospective tenants,- a married couple from Massachusetts -signed a lease and deposited money in the real estate company escrow account, paid the bed tax, arranged for a temporary Country Club membership, and had the apartment cleaned . On November 6, 2001 , the realtor paid paid Fairway Park a $50 fee and submitted the tenants names for entry in the gate house records . It appeared to Dr. Schafler , the realtor , the tenants and the renters' real estate agent that all preparations had been made. Plaintiff claims , however that on December 5, 2001 the realtor learned, *that the tenants' names had not been added to the gate records. Apparently the associations prohibited the tenants from renting the unit , thereby causing Dr. Schafler to lose $10.000 in expected rental fees, utility payments and fees in preparing the apartment for rental. Plaintiff seeks compensatory damages in amount of $10.000 the expected rental income. She also seeks punitive damages in the amount of $75.000 from each Fairway Park and Indian Springs, punitive damages and a

*Petitioner's addendum: it is shocking how misstated and distorted the facts of this are presented in this decision. Regrettably , it appears that they are thus presented to to support dismissal. The documents in the appendix, the facts presented, the issues, the dates, the timeline, the rights of the parties -it is all misstated. Judge Hurley has trivialized the issue, and his distortion makes it appear insignificant This was most likely intentional.

malpractice award in the amount of $75.000 from each of the named attorneys , and punitive damages in the amount of $50 000 from each of the individual board members of Fairway Park, and Indian Springs.

Discussion. A standard of review,

A motion to dismiss is appropriate only when it is demonstrated "beyond that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. "*Conley v Gibson 355 U.S. 41, 45-46 (1957)* For the purpose of a motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and all facts alleged by the plaintiff are accepted as true . See*Hishon v King & Spalding , 4677 US 69, 73, (1984).* See also ***Wright v Newsome 795, f 2nd 964, 967 (11th Cir1986)*"We may not dismiss unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims in the complaint that would entitle him or her to relief." Furthermore , the threshold is "exceedingly low " for a complaint to survive a motion to dismiss for failure to state a claim. ** *Ancata v prison Health Servs. Inc 769, f2nd , 700 (11th Cir 1985)* Regardles of the alleged facts , however , a court may dismiss a complaint on a dispositive issue of law. **Pleadings written by pro se plaintiff's are to be liberally construed and held to a less stringent standard than pleadings drafted by attorneys. ****Tannenbaum v United States 148 F 3rd 1262 (11th Cir 1998)* Plaintiff alleges that (1) Fairway Park, Indian Springs and Nason Yeager conspired with each other "not to include this tenants name at the entry gate", (2) extorted money from the plaintiff(3) committed trespass to chattel (4) intentionally, negligently and recklessly interfered with plaintiff's property rights. The complaint also appears to allege (5) breach of fiduciary duty (6) discrimination,(7) libel and slander (8) and legal malpractice. These claims are not contained in well-pleaded counts , but nonetheless this court will examine the complaint to determine whether plaintiff has stated a claim.

Defendants Motion to dismiss

The Defendants move to dismiss the complaint on the grounds that

**The District court has cited these authorities and then crossed them out. Some were decipherable therefore petitioner copied them , but some are not, therefore they were omitted .

*** Petitioner has a law degree. The tone of the court is unacceptably patronizing, and reeks of bias , favoritism and prejudgment.

(10 plaintiff conveyed the condominium to an entity called the Max Family Trust in December 1995, lacks standing to assert a claim based on interference with property rights with respect to that property (2) there are insufficient allegations to establish diversity jurisdiction, and therefore this court lacks subject matter jurisdiction over the case, (3) plaintiff cannot state a claim of interference with a business relationship (4) plaintiff fails to allege facts sufficient to state a claim of conspiracy, extortion, trespass to chattel, breach of fiduciary duty , discrimination, libel, slander and (5) plaintiff is not the client of Nason Yeager et al, therefore cannot state a claim of legal malpractice or negligence

Standing

Defendants Fairway Park and Nason Yeager et al argue that since Dr. Schafler conveyed title of the property to the Max Family Trust by warranty deed on December 21, 1995 , she has no standing under article III of the U.S. Constitution to state claims related to ownership of the condominium because she does not own it. There were no allegations in the complaint that she is either the beneficiary or trustee of the trust. ""Standing is the determination of whether a specific person is the proper party to bring a particular matter to a federal court for adjudication." Edwin Chermerinsky *Federal Jurisdiction # 2.3.1 (2nd ed 1994).*A motion to dismiss for lack of standing is a challenge to the court's subject matter jurisdiction and ability to hear the case. In a response to Fairway Park's motion to dismiss , Plaintiff indicates that she is the trustee of the Max Family Trust , and associations bill her for the trust's dues. This court is satisfied that at this stage -the pleading stage -plaintiff has et forth sufficient allegations to establish standing to bring the action based on ownership of the property. Fairway Park's claim that the trust is the real party in interest is more appropriately couched as a motion to dismiss for failure to allege facts to establish diversity jurisdiction.

Diversity Jurisdiction.

Fairway Park also moves to dismiss this case based on lack of diversity jurisdiction. Fairway argues that (1) since the property held by the trust is located in Florida , and the defendants are citizens of Florida there is incomplete diversity of citizenship, and (2) plaintiff's complaint relies on an unreasonable claim for punitive damages to reach the jurisdictional threshold. . However , plaintiff is correct that for purposes of evaluating diversity jurisdiction, the court looks to the citizenship of the express trust's trustees, who are the real parties to the controversy , and not the citizenship

of the beneficiaries or the trust itself. See *Navaro Savings Assoc. v Lee 445 US 428 (1980) Fed. R.Civ. P 17 a.* It is clear that plaintiff's claim for punitive damages is based in large amount on the jurisdictional amount, as she seeks punitive damages against a number of the defendants , in the amount of $75.000 each. Depending on the number of board members , the punitive damages claim could reach over $1 million , thereby at least ostensibly exceeding the jurisdictional amount of $75.000 (the next sentence is crossed out) This court looks to state law to determine whether punitive damages are recoverable, and if so whether the claimed amount is plausible and greater than the jurisdictional amount. See *Boyd v Homes Legend Inc, 188 f 3rd 1294 (11 th Cir 1999).* If it is possible for a jury under Florida law, to award the amount of punitive damages the plaintiff demands , jurisdiction exists. See *Ryan v State Farm Mut. Auto Ins. Co 934, F 2nd 276 (11th Cir 1991)* See also *Carroll v Merriwether, 921 F Supp 828 , (D.D.C. 1996)* ("When it appears that a claim for punitive damages comprises the bulk of the amount in controversy and may have been asserted solely for the purpose of conferring jurisdiction, the claim must be given particular close scrutiny) This court must determine exactly what claims are asserted . and whether punitive damages are permitted under Florida law for those claims , and if so, whether it is possible a jury could award punitive damages of at least $65.000 in this case (an amount which in addition to the $10.000 in compensatory damages , would satisfy the amount -in-controversy-requirement).Accordingly we must first consider whether plaintiff has stated a claim before may proceed to determine whether the amount in controversy requirement has been met.

Tort of interference with business relationship

The central allegation in the complaint is that the defendants conspired to interfere and in fact interfered with the plaintiff's contractual or business relationship with the tenants, with whom she signed a lease. The elements of the tort of intentional interference with a business relationship are (a) the existence of a business relationship under which plaintiff has legal rights, not necessarily evidenced by an enforceable contract, (b) defendants knowledge of the relationship, (c) intentional and unjustified interference with the relationship by the defendants, and (d) damage to the plaintiff as a result of the breach of the relationship. *Tamiani Trail Tours Inc v Cotton 463 So2d 1126 (Fla 1985).* Nason Yeager moves to dismiss this count on the ground that there can be no tortious interference where the defendant is a party to the business relationship , or has approval rights over a

a transaction that is the basis of the claim. *See Genet Co v Anheuser Busch Inc, 498 So 2nd 683, (Fla 3rd Dist. Ct of App 1986), Ernie Haire Ford Inc.v Ford Motor Co 260 F 3rd 1285, (11th Cir 20010* . Moreover they add , agents and employees of a party to the business relationship or contract cannot be held liable as interfering outsiders. See *Cox v CSX Intermodal Inc, 732 So 2nd 1092, (Fla 1st Dis Ct of App 1999).* ASssuming that the the parties to the business relationship that has been disrupted are Dr. Schafler and the Massachussets couple , since the rental agreement necessarily required the approval of the association , neither Fairway Park, nor Indian Spring can be held liable for interfering with the business relationship. Plaintiff's complaint states that the association has the authority to approve and regulate the condominium owners' renting of their units :" The renting of the property must conform to the condominium and association rules. She also admits that Nason Yeager is the agent of the associations. "Defendants Nason , Yeager et al are hired legal counsel on behalf of the two associations and the member shareholders. (plaintiff is a member shareholder.).Complaint * 3. Therefore this court agrees that the complaint fails to state a claim against any of the three defendants for the tort of interference with a business relationship.

Other claims

Defendants contend that the complaint fails to allege facts to state a claim of civil conspiracy , extortion or attempted extortion, trespass to chattel , breach of fiduciary duty, discrimination, libel or slander. The court agrees that the complaint states no facts that would state a claim. The Plaintiff merely recites these words in the title of the complaint ,. and relies on conclusory statements that "defendants entered into a conspiracy with each other and had decided not to include this tenants name to the entry gate and use this to extort unearned and unjustified money from Plaintiff. All the defendants decided to trespass on Plaintiff's chattel and intentionally , negligently and recklessly to interfere with Plaintiff's property rights and opt for extortion.(compl 12). A civil conspiracy requires (a) an agreement two or more parties, (b) to do an unlawful act , or to do a lawful act by unlawful means (c) the doing of some overt act in pursuance of the conspiracy and (d) damage to plaintiff as a result of the acts done under the conspiracy . See *Florida Fern Growers Assn Inc v Concerned Citizens of Putnam County, 616 So2nd 562, (Fla. 5th Distr. Ct of App. 1993), Wright v Yurko 446 So 2nd 116? (Fla. 5th Distr. Ct. of App. 1984.)*

" Trespass to personal property is the intentional use or interference with a chattel which is in the posession of another without justification" *Coddington v Staab 716, So 2nd 851, (Fla 4th Dist. Ct of App. 1998).* Extortion involves "obtaining something or compelling some action by illegal means , by force or coersion." *Black's Law Disctionary 605(7th ed 1999)** To state a cause of action for defamation in Florida , a plaintiff must allege that (a) the defendant published a false statement, (b) about the plaintiff (c) to a third party and (d) that the falsity of the statement caused injury to the plaintiff. *Serepian v Forman 652 So 2nd 490 , 493-494 (Fla 4th Dist. Ct. App. 1995)* Plaintiff has failed to allege that defendants committed an unlawful act, tresspassed on her real property, impermissibly trespassed to her personal property , made any threats , or made any false statements about her. Moreover plaintiff had failed to comply with the pleading requirements that a plaintiff must make a "short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ P. 8(a)(2) and make one claim in each count. Accordingly , any such claims must be dismissed.

Legal Malpractice.

Defendant Nason, Yeager contends that any claim for legal malpractice must fail because the firm never represented Dr. Schafler.Dr. Schafler's rationale is that because she is a shareholder in the associations, and the law firm represents the associations , then she is a client as well. *Silver Dunes Condominium of Destin Inc. v Beggs & Lang, So 2nd 1274 (Fla 1st Dis Ct of App 2000).* Where an attorney represents a closley held corporation, ** the attorney is not in privity with and therefore owes no separate duty of diligence and care to individual shareholders, absent a special circumstances or an agreement with the shareholder individually". Dr . Schafler a mere shareholder and not an intended beneficiary of the contract for legal services between the associations and the law firm , fails to state a claim of legal malpractice.

Conclusion.

The court finds that the plaintiff's complaint fails to state a claim upon relief may be granted , and therefore must be dismissed pursuant to Fed. R. Civ. P 12 (b) (6)

* the same source provides numerous definitions of extortion; plaintiff had used some as well. the district court had an agenda, and therefore chose a definition that fits the agenda.

** the associations are not corporations closed or otherwise; they are voluntary associations in contractual servitude to the property owners

In addition, even if the plaintiff could allege some unlawful act by the defendants for blocking her ability to rent out her unit , this court finds that no reasonable jury could award as punitive damages ian an amount that would enable the plaintiff to reach the jurisdictional threshold. The central claim of interference with a business relationship sets, forth facts that indicate that plaintiff suffered at most a little over $10.000 in lost rental income and related expenses. Plaintiff has failed to show that the alleged wrongful act involved fraud, malice, deliberate violence, oppression or outrageous conduct. *See Cook v Deltona Corp, 733 F 2nd 1552 (11th Cir. 1985)* Accordingly , the complaint must also be dimissed for lck of subject -matter jurisdiction pursuant to Fed. R.Civ.P 12 (b)(6).

It is hereby ORDERED and ADJUDGED as follows:
1. Defendants, Nason Yeager, Fairway Park, and Indian Springs 's motions to dismiss is hereby granted
2. Plaintiff's complaint is dismissed for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted
3. All pending motions are denied as moot and the Clerk of the court shall enter this case as closed.

April 25, 2002

ss/Daniel K.T. Hurley
District court judge